



04 JUN 2004

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In re Application of  
HAGHIRI, Yahya et al.  
Application No.: 09/926,010  
PCT No.: PCT/EP00/01272  
Int. Filing Date: 16 February 2000  
Priority Date: 17 February 1999  
Attorney's Docket No.: HAGH3001/JEK  
For: PORTABLE DATA SUPPORT WITH A  
DETACHABLE MINI CHIP CARD

DECISION ON  
REQUEST  
UNDER 37 CFR 1.42

This is a decision on applicants' "Renewed Submission Under 37 C.F.R. §1.42" filed on 10 December 2003.

#### BACKGROUND

On 16 February 2000, applicants filed international application PCT/EP00/01272. On 24 August 2000, a Demand was filed with the International Preliminary Examining Authority within nineteen months of the priority date, in which the United States was elected. Accordingly, the deadline for entry into the national stage in the United States was midnight on 17 August 2001.

On 14 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 September 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the fee for filing the oath or declaration later than thirty months were required.

On 06 March 2002, applicants filed a response to Notification of Missing Requirements accompanied by, *inter alia*, a declaration executed by heirs of the deceased, a petition for a four month extension of time and the fee for the four month extension of time.

On 27 March 2002, the Office mailed Decision on Papers Under 37 CFR 1.42 refusing applicants' request for status.

On 17 January 2003, the Office mailed Decision On Request Under 37 CFR 1.42, refusing applicants' request.

On 15 April 2003, applicants submitted "Renewed Submission Under 37 C.F.R. §1.42."

On 22 August 2003, the Office refused applicants' renewed request for status under 37 CFR 1.42.

On 10 December 2003, applicants submitted a second renewed request accompanied by a new declaration and the fee for a two month extension of time.

### DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. As "the terms 'Executor' and 'Administrator do not have exact counterparts in all foreign countries, ... the terms must be construed to fit the circumstances of the case." MPEP 409.01(d). Thus, "the person or persons having authority corresponding to that of executor or administrator are permitted to make application..." MPEP 409.01(d).

The submission of the declaration signed by the heirs is construed as an indication that a legal representative has not been appointed nor is one required to be appointed by applicable law, and thus, the heirs are signing as the legal representative of the estate. See MPEP 409.01(d). If this interpretation is incorrect, applicants are required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to the decision. The new declaration complies with 37 CFR 1.497(a)-(b) and 37 CFR 1.42.

### CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **GRANTED**.

The application has an international filing date of 16 February 2000 under 35 U.S.C. §363 and a date of 10 December 2003 under 35 U.S.C. §371(c)(1), (c)(2) and (c)(4). This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.



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